

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

COREY KEARN,

Plaintiff,

v.

CITY OF LAKEWOOD, et al.,

Defendant.

CASE NO. CV10-5334RBL

ORDER GRANTING MOTION TO
APPOINT COUNSEL
[DKT. #S 60 & 63]

Plaintiff is proceeding *pro se* and *in forma pauperis* (“IFP”) in this 42 U.S.C. § 1983 civil rights action against the City of Lakewood and three officers. Plaintiff Kearn seeks the appointment of counsel [Dkt. #s 60, 63, and 66] for the trial of his excessive force claim, which has survived summary judgment.

After careful consideration of the governing law and balance of the record, the Court ORDERS that counsel be appointed for plaintiff in this case. No constitutional right to counsel exists for an indigent plaintiff in a civil case unless the plaintiff may lose his physical liberty if he loses the litigation. *See Lassiter v. Dept. of Social Servs.*, 452 U.S. 18, 25 (1981). However, pursuant to 28 U.S.C. § 1915(e)(1), the Court has the discretion to appoint counsel for indigent

litigants who are proceeding IFP. *United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995).

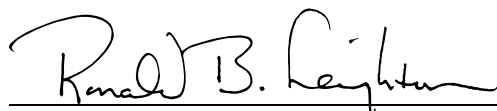
The Court will appoint counsel only under “exceptional circumstances.” *Id.*; *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). “A finding of exceptional circumstances requires an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to articulate his claims *pro se* in light of the complexity of the legal issues involved.” *Wilborn*, 789 F.2d at 1331 (internal quotations omitted). These factors must be viewed together before reaching a decision on whether to appoint counsel under § 1915(e)(1). *Id.*

Because Plaintiff’s excessive force claim has survived Defendants’ motion for summary judgment [Dkt. #65], appointment of counsel is appropriate, and Plaintiff’s Motion is GRANTED.

The Clerk is directed to appoint counsel from the Pro Bono Panel and to send a copy of this Order to plaintiff and counsel for defendants.

IT IS SO ORDERED.

Dated this 17th day of April, 2012.

A handwritten signature in black ink, reading "Ronald B. Leighton". The signature is written in a cursive, flowing style. Below the signature is a solid horizontal line.

RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE